

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

ORDER NO. R9-2005-0226

**TENTATIVE WASTE DISCHARGE REQUIREMENTS
FOR THE
PORT OF SAN DIEGO
DREDGING PROJECT AT THE TENTH AVENUE MARINE TERMINAL
BERTHS 10-3 THROUGH 10-6
SAN DIEGO COUNTY**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

1. The Port of San Diego (Port District) submitted an incomplete report of waste discharge (RWD) on April 28, 2005 for a proposed dredging project at the Tenth Avenue Marine Terminal, Berths 10-3 through 10-6. The Port District proposes to dredge approximately 30,000 cubic yards of material between Berths 10-3 to 10-6 to a new design depth of -43 feet Mean Lower Low Water by a clamshell bucket method. The Port District indicated that the dredge material will be placed on a barge, and transported to LA-5 Ocean Disposal Site for disposal. The Port District also indicated that there will be no return water from the barge.
2. On July 15, 2005, the Port District completed its RWD by submitting a copy of the Final Mitigated Negative Declaration, and a copy of the Coastal Development Permit. By letter dated July 15, 2005, the Port District also indicates that the U.S. Environmental Protection Agency has approved the proposal to dispose of 30,000 cubic yards of the materials from Tenth Avenue Marine Terminal at LA-5 Ocean Disposal Site.
3. Dredging of dredged spoils within San Diego Bay may cause turbidity, dissolved oxygen depletion, and affect other physical, chemical, and biological parameters of water quality in waters of the state. These impacts are short-term; however, they could impact the endangered California least tern's ability to forage. The Final Mitigated Negative Declaration requires the Port District to use a silt curtain during the California least tern season (April 1 to September 15) to minimize surface turbidity that can effect tern foraging success. The use of silt curtains will reduce the potential impact to a level below significance.
4. Dredging and disposal of dredged sediment as regulated by this Order is consistent with State Water Resources Control Board Resolution No. 68-16, Statement of Policy with Respect to Maintaining High Quality of Waters in California, and with the Water Quality Control Plan, San Diego Basin.

5. On July 2005, the Port District certified a final Mitigated Negative Declaration in accordance with the California Environmental Quality Act. The project as approved by the Port District would result in minor impacts that are mitigated to below a level of significance in regards to Marine Biological Resources.
6. The dredging project at the Tenth Avenue Marine Terminal, Berths 10-3 through 10-6, will not have a significant effect on water quality and beneficial uses for the life of the project. In evaluating potential long-term significant impacts, the Regional Board considered factors including, but not limited to the following:
 - (a) Beneficial uses associated with the San Diego Bay; and
 - (b) The discharger implements best management practices (BMP) including spill response and contingency plans in consultation with the Coast Guard for preventing and minimizing the effects of accidental discharges and spills during maintenance and normal operations.
7. The Regional Board, in establishing the requirements contained herein, considered factors including, but not limited to the following:
 - (a) Past, present, and probable future beneficial uses of the waters under consideration;
 - (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto;
 - (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area;
 - (d) Economic considerations;
 - (e) The need for developing housing within the region;
 - (f) The need to develop and use recycled water;
 - (g) Beneficial uses to be protected and water quality objectives reasonably required for that purpose;
 - (h) Other waste discharges; and
 - (i) The need to prevent nuisance.
8. The Regional Board has considered all water resource related environmental factors associated with the discharge of waste as described in this Order.

9. The Regional Board has notified the Port District and all other known interested parties of the intent to prescribe waste discharge requirements as described in this Order.
10. The Regional Board in public meetings heard and considered all comments pertaining to the proposed discharge.

IT IS HEREBY ORDERED, that the Port of San Diego (hereinafter discharger) shall comply with the following for the dredging project at the Tenth Avenue Marine Terminal, Berths 10-3 through 10-6:

A. PROHIBITIONS

1. Discharges of wastes in a manner and to locations which have not been specifically described in the report of waste discharge and for which valid waste discharge requirements are not in force are prohibited.
2. Neither the treatment, storage nor disposal of waste shall create a condition of pollution, contamination or nuisance, as defined by Section 13050 of the California Water Code.
3. Runoff from debris and dredge material processing and dewatering areas beyond the limits of lands specifically designated for processing and dewatering, as described in the report of waste discharge referenced in the Findings of this Order, is prohibited.
4. Dredging, storage or disposal of dredged material in a manner that causes a violation of any Basin Plan prohibition; or any Basin Plan water quality objective established for San Diego Bay; or causes a violation any Bays and Estuaries Policy prohibition; or Bays and Estuaries Policy water quality principles and policies is prohibited. The relevant sections from the Basin Plan and the Bays and Estuaries Policy are contained in Attachment No. 1 to this Order.
5. The project shall not cause significant adverse impacts upon the quality of waters in a local, state, or federal wildlife preserve or sanctuary, or other waters of significant local, regional, statewide, or national importance.

B. OPERATION SPECIFICATIONS

1. VOLUME

The volume of material dredged for the Tenth Avenue Marine Terminal, Berths 10-3 through 10-6 project shall not exceed 30,000 cubic yards unless the discharger obtains revised waste discharge requirements for the proposed increase.

2. PROJECT IMPLEMENTATION

The dredging project and disposal of dredged sediment shall be implemented in accordance with the project description presented in the report of waste discharge. Any project modification must have the prior Regional Board approval.

3. SEPARATION FROM AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE

Waste shall be discharged a sufficient distance from areas designated as being of special biological significance to assure maintenance of natural water quality conditions in these areas.

3. SEDIMENT REMOVAL

Sediment shall be removed in a manner that prevents or minimizes water quality degradation.

4. SEDIMENT DISPOSAL

- (a) Sediment shall not cause soluble pollutants in the water column in excess of the applicable water quality objectives as established in the California Toxics Rule.
- (b) If necessary to prevent a condition or threatened condition of pollution and/or nuisance, the discharger shall take measures to control the extend of turbidity in San Diego Bay that are equivalent to installing a silt curtain around the discharge point.

5. MONITORING AND REPORTING

The discharger shall comply with attached Monitoring and Reporting Program No. R9-2005-0226, and future revisions thereto as specified by the Regional Board. Monitoring results shall be reported at the intervals specified in Monitoring and Reporting Program No. R9-2005-0226.

6. ORDNANCE

The discharger shall remove all ordnance observed or detected during and after dredging activities including on the floor of San Diego Bay within the dredging site.

C. STANDARD PROVISIONS

1. DUTY TO COMPLY

The discharger must comply with all conditions of this Order. Any noncompliance with this Order constitutes a violation of the California Water Code and is grounds for (a) enforcement action; (b) termination, revocation and reissuance, or modification of this Order; or (c) denial of a report of waste discharge in application for new or revised waste discharge requirements.

2. ENTRY AND INSPECTION

The discharger shall allow the Regional Board, or an authorized representative upon the presentation of credentials and other documents as may be required by law, to:

- (a) Enter upon the discharger's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Order; and
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order; and
- (c) Provide transportation to inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
- (d) Sample or monitor at reasonable times, for the purposes of assuring compliance with this Order or as otherwise authorized by the California Water Code, any substances or parameters at any location.

3. PROPER OPERATION AND MAINTENANCE

The discharger shall, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the discharger to achieve compliance with the conditions of this Order. Proper operation and maintenance includes effective performance, seeking appropriations to fund adequate operation and maintenance, adequate operator staffing and training, and adequate laboratory and process controls including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of this Order.

4. ENDANGERMENT OF HEALTH AND ENVIRONMENT

The discharger shall report any noncompliance which may endanger health or the environment. Any such information shall be provided orally to the

Regional Board within 24 hours from the time the discharger becomes aware of the circumstances. A written submission shall also be provided within five days of the time the discharger becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected; the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The Regional Board, or an authorized representative, may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

5. *CORRECTIVE ACTION*

The discharger shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this Order, including such accelerated or additional monitoring as may be necessary to determine the nature and impact of the noncompliance.

6. *COMPLIANCE*

In an enforcement action, it shall not be a defense for the discharger that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with this Order. This provision applies for example, when the primary source of power of the treatment facility is failed, reduced, or lost.

D. REPORTING AND RECORDKEEPING REQUIREMENTS

1. *PERMIT REPOSITORY*

A copy of this Order shall be maintained at the discharger's facility and shall be available to operating personnel at all times.

2. *MAINTENANCE OF RECORDS*

The discharger shall retain records of all monitoring information, including all calibration and maintenance records, copies of all reports required by this Order, and records of all data used to complete the application for this Order. Records shall be maintained for a minimum of five years from the date of the sample, measurement, report, or application. This period may be extended during the course of any unresolved litigation regarding this discharge or when requested by the Regional Board.

3. *GENERAL REPORTING REQUIREMENT*

The discharger shall furnish to the Regional Board, within a reasonable time, any information which the Regional Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order. The discharger shall also furnish to the Regional Board, upon request, copies of records required to be kept by this Order.

4. PERMIT REVISION

This Order may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following:

- (a) Violation of any terms or conditions of this Order; or
- (b) Obtaining this Order by misrepresentation or failure to disclose fully all relevant facts; or
- (c) A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

The filing of a request by the discharger for the modification, revocation and reissuance, or termination of this Order, or notification of planned changes or anticipated noncompliance does not stay any condition of this Order.

5. CHANGE IN DISCHARGE

The discharger shall file a new Report of Waste Discharge at least 120 days prior to the following:

- (a) Significant change in the treatment or disposal method (e.g., change in the method of treatment which would significantly alter the nature of the waste).
- (b) Change in the disposal area from that described in the findings of this Order.
- (c) Increase in volume beyond that specified in this Order.
- (d) Other circumstances which result in a material change in character, amount, or location of the waste discharge.
- (e) Any planned change in the regulated facility or activity which may result in noncompliance with this Order.

6. CHANGE IN OWNERSHIP

This Order is not transferrable to any person except after notice to the Regional Board. The discharger shall submit this notice in writing at least 30 days in advance of any proposed transfer. The notice must include a written agreement between the existing and new discharger containing a specific date for the transfer of this Order's responsibility and coverage between the current discharger and the new discharger. This agreement shall include an acknowledgment that the existing discharger is liable for violations up to the transfer date and that the new discharger is liable from the transfer date on. The Regional Board may require modification or revocation and reissuance of this Order to change the name of the discharger and incorporate such other requirements as may be necessary under the California Water Code.

7. INCOMPLETE REPORTS

Where the discharger becomes aware that it failed to submit any relevant facts in a Report of Waste Discharge or submitted incorrect information in a Report of Waste Discharge or in any report to the Regional Board, it shall promptly submit such facts or information.

8. REPORT DECLARATION

All applications, reports, or information submitted to the Regional Board shall be signed and certified as follows:

- (a) The Report of Waste Discharge shall be signed as follows:
 - (1) For a corporation - by a principal executive officer of at least the level of vice-president.
 - (2) For a partnership or sole proprietorship - by a general partner or the proprietor, respectively.
 - (3) For a municipality, state, federal or other public agency - by either a principal executive officer or ranking elected official.
- (b) All other reports required by this Order and other information required by the Regional Board shall be signed by a person designated in paragraph (a) of this provision, or by a duly authorized representative of that person. An individual is a duly authorized representative only if:
 - (1) The authorization is made in writing by a person described in paragraph (a) of this provision; and

- (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity; and
- (3) The written authorization is submitted to the Regional Board.
- (c) Any person signing a document under this Section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

9. REGIONAL BOARD ADDRESS

The discharger shall submit reports required under this Order, or other information required by the Regional Board, to:

Executive Officer
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92124-1331

E. NOTIFICATIONS

1. VESTED RIGHTS

This Order does not convey any property rights of any sort or any exclusive privileges. The requirements prescribed herein do not authorize the commission of any act causing injury to persons or property, nor protect the discharger from liability under federal, state or local laws, nor create a vested right for the discharger to continue the waste discharge.

2. U.S. EPA REVIEW

These requirements have not been officially reviewed by the United States Environmental Protection Agency and are not issued pursuant to Section 402 of the Clean Water Act.

3. SEVERABILITY

The provisions of this Order are severable, and if any provision of this Order, or the application of any provision of this Order to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Order, shall not be affected thereby.

4. *WATER QUALITY CERTIFICATION*

The adoption of these waste discharge requirements constitutes water quality certification for the project as described in this Order pursuant to Section 401 of the Clean Water Act.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on October 12, 2005.

TENTATIVE

John H. Robertus